



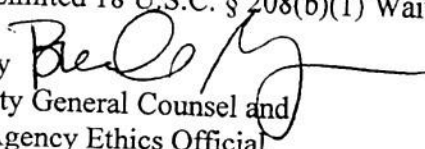
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

FEB 06 2014

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Request for a Limited 18 U.S.C. § 208(b)(1) Waiver

FROM: Brenda Mallory 
Principal Deputy General Counsel and
Designated Agency Ethics Official

TO: Rick Ziegler, Scientist
National Center for Environmental Assessment
Office of Research and Development

You seek an individual waiver pursuant to 18 U.S.C. § 208(b)(1) to allow you to participate personally and substantially in a particular matter from which you would be disqualified absent such waiver because of your financial interest in the matter. Specifically, you wish to participate fully and candidly with the Agency regarding possible options regarding future ownership of a specific patent you are pursuing in your personal capacity and in discussions about how best to develop or encourage work on either that patent or closely related issues given EPA's current organizational structure. You already understand that you cannot participate in the Cooperative Research and Development Agreement (CRADA) that is related to the patent.

Your request for a limited waiver is hereby granted. This waiver is limited to discussions about possible acquisition by EPA of the patent rights and also possible options for further development within EPA of the patent itself or closely related issues. Depending on the resolution of those discussions, you may need to seek another waiver in the future.

In the course of your official EPA duties, you had worked on a social media project that, as it happens, involved innovative technology that could be pursued as a patent. In August 2011, EPA sought a provisional patent for that technology, and you continued to be assigned to the project associated with that work. In August 2012, however, EPA declined to pursue a non-provisional patent application. Pursuant to Section 7 of the Federal Technology Transfer Act, legal ownership of the patent reverted to you as the employee-inventor. You then filed for a non-provisional patent in your personal capacity and spent money on certain fees and other costs associated with that filing. In December 2012, you and your management were advised about the financial conflict of interest. Given your disqualifying financial interest, you were recused from further participation on particular matters involving the patent, which included the CRADA

as well as discussions about the patent itself.

You have a financial interest in any royalty payments from the University of North Carolina Chapel Hill (UNC) made to you as an employee-inventor of the technology. Because the technology has been licensed to UNC, the potential for financial gain or loss is predictable. You may also have a financial interest in your investment into the patent at this point. You would not have any imputed interest in UNC or any other company licensing the invention because you have no equity interest in the entities, nor do you hold any position with or consult for them. If, however, in the future you negotiate for or acquire any other disqualifying financial interest, such as a financial interest in a company commercializing the invention, then you will need to cease participating personally and substantially in any particular matter as part of your EPA duties that could affect such financial interest and seek advice from OGC/Ethics.

A criminal statute, 18 U.S.C. § 208(a), prohibits a federal employee from participating personally and substantially in an official capacity in any particular matter in which he has a financial interest if there will be a direct and predictable effect on that interest. However, individual waivers may be granted if his interest in the particular matter is not so substantial as to be deemed likely to affect the integrity of his service to the Government. In making this determination to grant this waiver, I have considered the factors provided in 5 C.F.R. § 2640.301(b). EPA does not know (and cannot without further discussion with you) the dollar value of your investment into the patent at this point, nor can we anticipate the estimate the possible market value of the patent, if granted. Moreover, where an invention is not currently paying royalties, amounts of future royalties from commercialization, if any, are completely unknown. The possibility of future royalties is wholly speculative and the actual amount of any such future interest cannot be determined.

In balancing the potential financial interest against the integrity of your service, EPA notes that your role as the inventor is critical to any substantive discussions that the Agency can have. Although EPA is not able to calculate any credible valuation of the financial interest, we are prepared to grant this limited waiver to further discussions about possible acquisition by EPA of the patent rights and also possible options for further development within EPA of the patent itself or closely related issues.

Please feel free to contact me or Justina Fugh, Senior Counsel for Ethics, at 202-564-1786 if you have any questions regarding this waiver.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON D.C., 20460

OFFICE OF GENERAL COUNSEL

APR 28 2014

MEMORANDUM

SUBJECT: Waiver Pursuant to 18 U.S.C. Sec. 208(b)(1)

FROM: Kevin S. Minoli *KSM*
Acting Principal Deputy General Counsel and
Designated Agency Ethics Official

TO: Susan Hedman
Regional Administrator
Region V

I understand that you have been invited by the President to serve in your official Government capacity on the board of the Ohio River Valley Water Sanitation Commission (ORSANCO) as a federal appointment. Because the financial interests of the organization will be imputed to you under 18 U.S.C. § 208(a), you would be disqualified from participating in any particular matter affecting the organization's financial interest in the absence of a section 208(b)(1) waiver. The United States Congress created ORSANCO in 1936 as a federal-interstate commission dedicated to controlling water pollution in the Ohio River Valley. Though ORSANCO predates the creation of EPA, the interests of ORSANCO and EPA are consonant, as EPA's mission is to protect human health and the environment in the United States. The Office of General Counsel (OGC) therefore concludes that EPA has the statutory authority to permit an EPA employee to serve on the ORSANCO board as part of official EPA duties.

As the Regional Administrator for EPA's Region V office, which has responsibility for the Midwest, you are in the best position to represent the federal environmental perspective. Because you will be serving with ORSANCO in your official capacity and under the ultimate supervision of EPA, your duties at ORSANCO will be carried out in furtherance of the interests of the United States. For that reason, I consider that there is diminished risk to the integrity of the services that EPA and the federal government expect from you. I am therefore writing to grant you an individual waiver pursuant to 18 U.S.C. § 208(b)(1) to allow you to serve as a member of the ORSANCO board. In that position, you will be representing the United States Environmental Protection Agency (EPA) in your official capacity.

Please note, however, that this waiver contains certain necessary limitations:

- 1) You cannot participate in any fundraising activities on behalf of ORSANCO;
- 2) You cannot represent ORSANCO or lobby on its behalf before any department, agency, officer or employee of the United States;
- 3) In your position at EPA, you cannot participate in any investigations of the activities of ORSANCO other than as a provider of information or testimony, nor can you participate in developing regulations that would impact ORSANCO or be involved in enforcing regulations pertaining to that organization or decisions to award EPA grants or contracts to ORSANCO; and
- 4) You cannot participate in the solicitation of federal government speakers for any event held or sponsored by ORSANCO.

Please feel free to contact me or Justina Fugh, Senior Counsel for Ethics, at 202-564-1786 if you have any questions regarding this waiver.

cc: Justina Fugh, Senior Counsel for Ethics
Robert Kaplan, Regional Counsel
Ann Coyle, Regional Ethics Counsel



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

JUL - 1 2014

OFFICE OF
GENERAL COUNSEL

TO: Kevin Minoli
Principal Deputy General Counsel and
Designated Agency Ethics Official

FROM: Jennie Keith
Deputy Ethics Official *vjk 07/01/2014*

RE: Request for Waiver Pursuant to the Criminal Statute, 18 U.S.C. § 208(b)(1) for
Brian Grant

Pursuant to 18 U.S.C. § 208(b)(1), I recommend that you waive the participation prohibition in 18 U.S.C. § 208(a) for Brian Grant. Under § 208(a), the law prohibits an employee from participating personally and substantially in a particular matter which will have a direct and predictable effect on his financial interest. As the DAEO, and after consultation with the Office of Government Ethics (OGE), you may waive this criminal prohibition upon a written determination that the financial interest involved is not so substantial as to be deemed likely to affect the integrity of the service that the Government may expect from the employee.

Mr. Grant has an imputed stock interest in the company, DuPont, due to his spouse's vested beneficial interest in an irrevocable trust. Please note I have already ascertained that his spouse, who is also an OGC attorney, does not present any conflicts issues given the scope of her assigned duties and also that this waiver covers Mr. Grant's participation only, not his spouse. The attributable imputed interest to Mr. Grant is 489.6 shares valued at approximately \$33,000. This interest represents approximately 1.3% of his overall investment portfolio. Mr. Grant is currently recused from participating in any particular matter (both matters of general applicability and specific party) that will affect the financial interests of DuPont because the stock value is above the regulatory *de minimis* thresholds set at 5 C.F.R. § 2640.202.

Currently pending in his office are Significant New Use Rules (SNURs) that may have a direct and predictable effect upon the financial interests of DuPont. Pursuant to the Toxic Substances Control Act, EPA uses significant new use rules (SNURs) in appropriate circumstances to ensure that, once a chemical has been phased out or taken off the market for certain uses, no company will be able to resume manufacturing or processing the chemical for that use without prior notice to the Agency. The potential conflict of interest arises because there are a number of SNURs going through the rulemaking process, and these all involve chemicals that are manufactured by a number of entities, including DuPont.

As the practice group leader for the Toxic Substances Control Act, Mr. Grant oversees all legal issues arising under TSCA. Because of his expertise, the complexity of the upcoming SNURs, and the necessity of having one supervising attorney to ensure consistency in counseling for all related SNURs, it is in EPA's interests for Mr. Grant to participate in the SNURs affecting DuPont's financial interests. Upon reviewing his financial interests, the particular matter, and Mr. Grant's role and participation, I recommend that you determine that Mr. Grant's financial interest is not so substantial as to affect the integrity of the services which the government may expect from him. See background notes for a more complete analysis.

Mr. Grant's participation is not unconditional. Rather, this waiver is limited. EPA will permit Mr. Grant to participate only in particular matters of general applicability – not in any specific party matters – provided that his attributable interest in DuPont's stock itself does not exceed \$50,000 and his aggregated attributable interest for all affected parties does not exceed \$75,000. Should his interests rise above these new threshold values, he has been counseled that he must cease his participation in general applicability matters.

For the above reasons, I recommend that you waive Mr. Grant's disqualification requirement in 18 U.S.C. § 208(a) for his imputed financial interest in DuPont. I have consulted with the Office of Government Ethics on the issuance of this waiver. Please mark your determination below and return to me or, in my absence, to Justina Fugh.

APPROVAL: ☒ The financial interest is not so substantial as to be deemed likely to affect the integrity of the service that the Government may expect from the employee.

DISAPPROVAL: ☐

Signature:

Y. S. O.

Date:

7/3/14

Background Notes on the 18 U.S.C. § 208(b)(1) Waiver for Brian Grant

FOIA Exemption 5 Deliberative Process Privilege



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

JUL 11 2014

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Waiver Pursuant to 18 U.S.C. § 208(b)(1)

FROM: Kevin S. Minoli
Principal Deputy General Counsel and
Designated Agency Ethics Official

KSQ

TO: Samuel Ziegler
Manager, Watersheds Office, Region 9

I understand that the Administrator of the U.S. Environmental Protection Agency ("EPA") has appointed you to serve in your official Government capacity as the EPA representative to the San Francisco Bay Conservation and Development Commission (the "Commission"). The State of California created the Commission in 1965 in response to widespread public concern over the future of the San Francisco Bay. Comprised of many representatives from State and local governments, the Commission is charged with developing a plan for the long-term use of the San Francisco Bay and regulating development around the Bay while the plan is being prepared. The Commission is the federally-designated state coastal management agency for the San Francisco Bay segment of the California coastal zone. Under this designation, the Commission is empowered to use the authority of the federal Coastal Zone Management Act to ensure federal projects and activities are consistent with the policies of the Bay Plan and with state law. See 16 U.S.C. §§ 1451-1464. The interests of EPA and the Commission are consonant, as EPA's mission is to protect human health and the environment in the United States.

Your appointment to the Commission on behalf of EPA is made pursuant to the State of California's McAtter-Petris Act, which the California State Legislature amended in 1971 to include an EPA representative to serve as a member of the Commission. See California Government Code § 66620(b). As a member, the financial interests of the organization will be imputed to you under 18 U.S.C. § 208(a), and you would be disqualified from participating in any particular matter affecting the organization's financial interests in the absence of a § 208(b)(1) waiver.

As the EPA appointed representative on the Commission, you are serving in your official Government capacity and under the ultimate supervision of EPA. Your duties as a commissioner will be carried out in furtherance of the interests of the United States. For that reason, I consider that there is diminished risk that the integrity of the services that the EPA and the Federal Government expect from you would be affected. Therefore, I am writing to grant you an individual waiver pursuant to 18 U.S.C. § 208(b)(1) to allow you to serve, in your official Government capacity, as a member of the San Francisco Bay Conservation and Development Commission.

Please note that this waiver contains certain necessary limitations:

1. You may not participate in any fundraising activities on behalf of the Commission;
2. You may not represent the Commission or lobby on its behalf before any department, agency, officer or employee of the United States;
3. In your EPA position, you may not participate in any investigations of the Commission's activities other than as a provider of information or testimony, nor can you participate in developing regulations that would impact the Commission or be involved in enforcing regulations pertaining to that organization or making decisions to award EPA grants or contracts to the Commission; and
4. You may not participate in the solicitation of federal government speakers for any event held or sponsored by the Commission.

Please feel free to contact me or Justina Fugh, Senior Counsel for Ethics, if you have any questions. Justina can be reached at (202) 564-1786.

cc: Justina Fugh, Senior Counsel for Ethics
Alexis Strauss, Deputy Regional Administrator/Deputy Ethics Official
Steven Jawgiel, Regional Ethics Counsel



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

OFFICE OF
GENERAL COUNSEL

JUL 11 2014

MEMORANDUM

SUBJECT: Waiver Pursuant to 18 U.S.C. § 208(b)(1)

FROM: Kevin S. Minoli
Principal Deputy General Counsel and
Designated Agency Ethics Official

KSS

TO: Jason Brush
Manager, Watersheds Office, Region 9

I understand that the Administrator of the U.S. Environmental Protection Agency ("EPA") has appointed you to serve as the EPA's alternate representative to the San Francisco Bay Conservation and Development Commission (the "Commission") in your official Government capacity. The State of California created the Commission in 1965 in response to widespread public concern over the future of the San Francisco Bay. Comprised of many representatives from State and local governments, the Commission is charged with developing a plan for the long-term use of the San Francisco Bay and regulating development around the Bay while the plan is being prepared. The Commission is the federally-designated state coastal management agency for the San Francisco Bay segment of the California coastal zone. Under this designation, the Commission is empowered to use the authority of the federal Coastal Zone Management Act to ensure federal projects and activities are consistent with the policies of the Bay Plan and with state law. See 16 U.S.C. §§ 1451-1464. The interests of EPA and the Commission are consonant, as EPA's mission is to protect human health and the environment in the United States.

Your appointment to the Commission on behalf of EPA is made pursuant to the State of California's McAteer-Petris Act, which the California State Legislature amended in 1971 to include an EPA representative and alternate representative to serve as members of the Commission. See California Government Code § 66620(b). As a member, the financial interests of the organization will be imputed to you under 18 U.S.C. § 208(a), and you would be disqualified from participating in any particular matter affecting the organization's financial interests in the absence of a § 208(b)(1) waiver.

As the EPA appointed alternative representative on the Commission, you will serve in your official EPA capacity and under the ultimate supervision of EPA. Your duties as an alternate commissioner will be carried out in furtherance of the interests of the United States. For that reason, I consider that there is diminished risk to the integrity of the services that EPA and the Federal Government expect from you. Therefore, I am writing to grant you an individual waiver pursuant to 18 U.S.C. § 208(b)(1) to allow you to serve, as the need arises, as an alternative member of the San Francisco Bay Conservation and Development Commission.

Please note that this waiver contains certain necessary limitations:

1. You may not participate in any fundraising activities on behalf of the Commission;
2. You may not represent the Commission or lobby on its behalf before any department, agency, officer or employee of the United States;
3. In your EPA position, you may not participate in any investigations of the Commission's activities other than as a provider of information or testimony, nor can you participate in developing regulations that would impact the Commission or be involved in enforcing regulations pertaining to that organization or making decisions to award EPA grants or contracts to the Commission; and
4. You may not participate in the solicitation of federal government speakers for any event held or sponsored by the Commission.

Please feel free to contact me or Justina Fugh, Senior Counsel for Ethics, if you have any questions. Justina can be reached at (202) 564-1786.

cc: Justina Fugh, Senior Counsel for Ethics
Alexis Strauss, Deputy Regional Administrator/Deputy Ethics Official
Steven Jawgiel, Regional Ethics Counsel



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

OFFICE OF
GENERAL COUNSEL

SEP 24 2014

MEMORANDUM

SUBJECT: Request for Waiver Pursuant to the Criminal Statute, 18 U.S.C. § 208(b)(1), for Sarah Mueller

FROM: Justina Fugh
Senior Counsel for Ethics

TO: Kevin Minoli
Principal Deputy General Counsel and
Designated Agency Ethics Official

Pursuant to 18 U.S.C. § 208(a), executive branch employees are prohibited from participating personally and substantially in a particular matter which will have a direct and predictable effect on their financial interest or those interests that are imputed to them. As EPA's DAEO, you may waive this criminal prohibition upon a written determination that the financial interest involved is not so substantial as to be deemed likely to affect the integrity of the service that the Government may expect from the employee.

The Office of Regional Counsel in Region IX requests an individual waiver for Sarah Mueller, an enforcement attorney, to permit her to participate in all aspects of a global settlement of the Del Amo Superfund site ("site"), in Los Angeles, California, which encompasses 82 parcels in Operable Unit 1 ("OU1"). Attached is a background document that contains enforcement sensitive information subject to deliberative process and attorney client privileges.

In applying the factors set forth at 5 CFR 2640.301(b), please consider in particular the fact that, since 2011, Ms. Mueller has been the only regional attorney assigned to work on this specific party matter. She has extensive knowledge and experience on this complex site. She knows all of the details and nuances of the enforcement approaches taken with respect to the various parties involved, and the strategies being used to address the issues at this large site. Her continued participation and involvement in all aspects of this case are vitally important and necessary to the Agency.

At the present time, the Agency is aware of facts that create a conflict of interest for Ms. Mueller's imputed interests pursuant to 18 U.S.C. § 208. After careful consideration of the facts, which include enforcement sensitive and privileged information, I recommend that you approve this waiver to allow Ms. Mueller to participate in all aspects of a global settlement of the Del Amo Superfund Site ("Site") at this time. As the situation evolves and additional facts become known to the Agency, I will revisit with the Region and the Office of Government Ethics ("OGE") the terms of this waiver. As necessary, we will make changes to add any and all appropriate limitations.

I have consulted with the OGE on the issuance of this waiver and the possible need to revisit its terms in the future. Please mark your determination below and return to me.

APPROVAL: ☒ The financial interest is not so substantial as to be deemed likely to affect the integrity of the service that the Government may expect from the employee.

DISAPPROVAL: ☐

Signature:

Y. S. S.

Date:

9/24/14